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Publications

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Human Rights  
Commission

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## Needed: a rational explanation

An interesting decision was handed down by Prof. Robert W. Kerr sitting as a board of inquiry in the matter of Mr. Peter Mitchell's complaint against Nobilium Products Ltd.

Mr. Mitchell had complained that though he had been an employee of the respondents for a period of some seven years, he had eventually been dismissed because of his race, colour, nationality, ancestry or place of origin, contrary to the provisions of the *Ontario Human Rights Code*. The respondents denied that his dismissal was due to these reasons and claimed instead that their course of action was dictated by the poor work performance of the complainant.

While the board of inquiry found that this claim by the respondent had sufficient credibility, the additional

question was raised: Did discriminatory motivations play a subsidiary role in the dismissal? If, in any wise, they formed a part (though not necessarily the major part) of the reasons for dismissal, then a violation of the Code is deemed to have occurred. This principle was first established by a board of inquiry in 1973 and affirmed in another decision a year later.

Was there any reason to suppose that discriminatory motives did, in fact, play a subsidiary role in the case under consideration? It was established that the respondent's supervisor had used racial slurs towards blacks; and that when it came to dismissals, Greek employees were retained or rehired while black employees were discharged. On the basis of these circumstances, Prof.

Kerr decided that the respondent had a responsibility to give a rational explanation for Mr. Mitchell's dismissal. That is to say, he placed the onus for such an explanation upon the respondent. Since the latter was unable to offer such a rationale, the board of inquiry ruled that discrimination had in fact occurred in the meaning of the Act.

Mr. Mitchell was awarded \$3,012.00 for loss of wages. Further, since there was fear on the part of other employees who had testified at the hearing that they might be dismissed in a reprisal action by the respondent, the board ordered that the respondent and its servants and agents must desist from any violation of section 6 of the *Ontario Human Rights Code*, that is to say, from undertaking any reprisal action.

Youth in Scarborough were given a unique opportunity to air their concerns on many social issues during a youth symposium held Saturday, August 14, 1982. The symposium was co-sponsored by the Race Relations Division of the Ontario Human Rights Commission and Tropicana Community Services Organization. Participants held some workshops outdoors, taking advantage of the hot summer day.



So begins the autobiography and the personal credo of Rabbi W. Gunther Plaut, vice-chairman of the Ontario Human Rights Commission, editor of *Affirmation* and one of our most outspoken and humane theologians. He is a man of unique vision, who combines tremendous intellect with compassion and humanity; a learned academician who, over the course of 16 years, ultimately produced the most complete commentary on the Torah while, at the same time, continuing to play a leading role in the community.

## Renaissance man

by Toni Silberman

'The day is short and the task is great . . .

and the master of the house is pressing.

You are not required to complete the work,

but neither are you free to abstain from it.'

Rabbi Plaut has been variously described as a scholar, sportsman, artist, sculptor . . . leader, columnist, teacher, writer, preacher . . . public servant, statesman and community spokesman.

A defender of many causes, he has attempted throughout his life to strengthen the fabric of society and lend to disparate groups a sense of cohesion and purpose. His status in the community has granted him access to the most powerful men and women within Canada and through-



## Native administrators meet

by Jo-Anne St-Onge



Staff of the Ojibway-Cree Cultural Centre, which was instrumental in planning the conference. From left to right: Tina Jones, student project manager, Bert Morrison, co-ordinator of the Ojibway-Cree Cultural Centre, Jo-Anne St-Onge, human rights officer and Ursula Bisschops, librarian.

An important conference, funded by the Ministry of Citizenship and Culture, Native Community Branch, was held in Timmins during the summer. Co-ordinators were Alex Spence, Director of the Ojibway-Cree Cultural Centre, Timmins; Andrew Wesley, Native Community Branch, Timmins; Irene Mitchell, human rights officer, Thunder Bay; and Jo-Anne St-Onge, human rights officer, Timmins.

The conference was open to all band administrators as well as administrators of friendship centres and native organizations. Twenty-one administrators participated; they came from as far away as Geraldton, Attawapiskat and Calstock.

The purpose of the conference was to educate administrators on the legal, educational and mediation aspects of the *Human Rights Code*, so that they might assist members of their communities in identifying areas of discrimination, and encourage them to report incidents. The conference was an integral part of the commission's efforts in reaching and assisting the native community.

The participants were given the opportunity to discuss their concerns as well as their own attitudes towards other groups.

Madeline Cooper, one of the participants at the conference, informed us of her role with the Ministry of Natural Resources. She was appointed to the new position of Native Employment Facilitator for the Northern region.

The ministry's program includes developing a system to encourage native people to apply for entry level positions in the ministry; developing extensive on-the-job training programs which would assist Indian employees in meeting the requirements of technical/professional and other types of positions; developing co-operative training programs with the federal government and/or other ministries; developing a comprehensive seminar for all Ministry of Natural Resources supervisors and managers who would be working with Indian employees; developing special programs for elementary and secondary schools to ensure that resource oriented careers are included in career guidance to natives, and developing contacts with native communities for the purpose of expanding employment opportunities with the Ministry of Natural Resources.

The commission hopes that similar conferences will be held in other districts in Northern Ontario.

Jo-Anne St-Onge is an officer with the Ontario Human Rights Commission.

## If you can't avoid it... put up a good fight!

by Fern Gaspar

While some victims of sexual harassment still refrain from reporting it for fear it cannot be proven, an increasing number of women (by and large these victims are females) are learning how to take the right steps to ensure that they will win their cases.

A recent case settled by the commission is a good example of how an employee can effectively fight sexual discrimination.

A secretary with one of the major employers in Ontario had a good employment record until she was transferred to a new section. Allegedly, her new manager soon started making sexual advances to her and continued despite her steady rejections. She kept several co-workers and her former manager informed of these advances and made notes of dates and details of the manager's sexual conduct. After some months, the manager became moody and began treating her harshly. He started making veiled threats of dismissal when she didn't respond to his interest. Her first performance evaluation by him was rather negative, and she refused to sign it because she believed it was inaccurate and unfair. At the same time, she stated her concern that he was retaliating because of her refusal to have sex with him.

The manager then stopped the sexual advances, but did not withdraw the negative evaluation or stop harassing the complainant with respect to her work. She therefore asked for meetings with a senior administrator and the affirmative action office of the employer and reported the whole matter, albeit with discretion. Here, the complainant could have done even better had she clearly presented all the details of the manager's sexual conduct and if she had had a union or other representative with her to witness and assist her in presenting the case.

As the negative evaluation was still not withdrawn and as it became apparent that the manager was preparing a case to fire her, the complainant filed a formal grievance with her union. Within weeks she was dismissed for poor performance. She then filed a second grievance and a complaint

with the Ontario Human Rights Commission.

The manager maintained his stance, but after a grievance hearing, the nominee (an informal arbitrator) recommended that the complainant be reinstated with back pay. This recommendation was based on the facts that there were significant discrepancies in the employee's employment record (for instance, she had been given a merit increase a short time before the negative evaluation); she was a more consistent and impressive witness than the manager; her previous employment history was inconsistent with that of someone likely to perform poorly, unless under duress; and witnesses had confirmed her reports of the sexual advances as they had happened.

The manager agreed to withdraw the negative evaluation and reinstate the employee with no loss of pay or seniority, which disposed of the union grievances.

The case with the commission was held in abeyance until the resolution of the grievances, but now settlement discussions took place expeditiously in order not to delay the reinstatement process. Based on preliminary inquiries by the commission, there was an indication that other women had been sexually harassed by the same manager and that the complainant had suffered severe anxiety over the entire situation.

Thus, a settlement was reached which followed the principle of providing full redress for the victim and ensuring that the problem would not recur. The complainant received \$3,000 in compensation for psychological damages and a letter of apology from the employer; copies of the allegations, the manager's response and the nominee's decision are to be kept in the complainant's and the manager's personnel files for future reference (action against personal respondents is only feasible or warranted when direct evidence exists or a pattern of repetition develops).

A last settlement feature agreed to by the respondent was the establishment of a policy against sexual harassment, and guidelines for handling of complaints by employees. This is an extremely effective means of preventing sexual harassment since it conveys the message to potential 'harassers' and their victims: It should not happen... but if it does, the alert works!

Fern Gaspar is a human rights officer with the commission.

## New Human Rights Publications



The Ontario Human Rights Commission has developed a number of new publications designed to help the public know and understand their rights and obligations under the new *Human Rights Code*.

A 39-page booklet entitled *A Guide to the Human Rights Code*, explains the provisions of the legislation and outlines the operating procedures of the commission. Five pamphlets were also prepared to outline briefly the areas of employment, sexual harassment, handicapped persons, human rights in Ontario and complaint procedures.

In addition, a 13-minute film was produced for the commission's 20th

anniversary. 'Together We Are One', which is available to the public in a 16 mm 3/4" video cassette (signed for the hearing impaired), traces the evolution of human rights and freedoms throughout the ages and celebrates Ontario's continuing commitment to the principles of justice and equality for all.

For your copy of the above publications, and more information on the film, please write to: Ontario Human Rights Commission, Queen's Park, Toronto, Ontario M7A 1A2

or phone your nearest commission office.



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## Editorial

Because of the significance of the following article by Canon Borden C. Purchell, chairman of the Ontario Human Rights

Commission, we are publishing it in this issue as an editorial. The 'Chairman's corner' will return next March.

## Human Rights Day



December 10, 1982 marks the 34th anniversary of the United Nations' Universal Declaration of Human Rights, whose principles form an integral part of the preamble of the Ontario *Human Rights Code*. The adoption of the Universal Declaration on December 10, 1948 was particularly charged with excitement because, for the first time, nations of the world spoke with one voice to proclaim fundamental principles of human rights. The Declaration serves not only as an inspirational tribute to the human spirit, but also as a commitment to the furtherance of universal social harmony.

Closer to home, the past 20 years have seen great strides made in the field of human rights. Many policies and practices which we now take for granted are the result of diligence, dedication and vision on the part of concerned community members. Much of our legislation which governs human rights and many of the rules regarding the manner in which human beings should treat one another are sanctioned by laws ensuring equality of opportunity.

However, governments may legislate laws and charters of

rights and freedoms, but it is in our own attitudes and hearts that the real change must take place. We must be dedicated to the cause of human rights in our own community, in our province, in our country and throughout the world.

The commission, as part of its celebration, will be co-sponsoring an international conference on human rights in Toronto, on December 10, 1982.

We urge all agencies, organizations, municipalities, communities and individuals concerned with the protection and promotion of human rights to give appropriate significance to *December 10 - Human Rights Day*: to take, now, as in the past, effective measures to ensure that the 34th anniversary of the Universal Declaration of Human Rights is the occasion of special efforts to promote international understanding, co-operation and peace as well as universal respect for human rights.

With this spirit, I wish you, on behalf of the Ontario Human Rights Commission, good health, happiness and all the joys of the festive season.

The commission also received this welcome message through the mail.

We the staff of the Human Relations Commission would like to send out congratulations to the commission and staff for publishing such a fine newsletter, *Affirmation*. Each of us enjoy your articles and the issues you face and make decisions on in today's climate.

Sincerely yours,  
P.C. White  
Human Relations Commission  
City of Colorado Springs  
Colorado

## The Race Relations Division at work

The following are a few excerpts from the report which the Race Relations Division of the Ontario Human Rights Commission issues from time to time.

In one case, a description of a suspect who was believed to have committed rape was given to the *London Free Press* by the police. The suspect was described as 'Arab looking, with full lips, dark complexion, dark curly hair and big nose.' Members of the Arab community objected to the inclusion of the identifier 'Arab looking'.

The human rights officer met with the complainants, as well as with other community members and the police, and discussed the perceptions from both sides. Subsequently, the police apologized to the Arab community and took internal disciplinary action.

In another case, members of the Vietnamese Community Association in Ottawa expressed concern regarding the disappearance of a 17-year-old Vietnamese girl. The group believed that the young girl's disappearance was treated too lightly by police, although there seemed to be support to the theory that this was a possible abduction. The families involved had received mysterious phone calls inviting female members of the household to respond to dubious job offers.

## What is similar fact evidence?

Suppose Ms. B. files a complaint with the commission against her employer, Mr. E., alleging that he had repeatedly made sexual advances, which she repulsed, but that he was persistent and, that when he failed to obtain Ms. B's consent to his advances, he discharged her.

Suppose further that no witnesses are available to support Ms. B's allegations. However, information from other employees (and former employees) reveals that Mr. E. had a habit of making advances to female members of his staff and that a number of them either felt that they had to leave his employ or were fired like Ms. B.

The evidence of these employees is called 'similar fact evidence' and it presents the officer, the commission and the board of inquiry with a knotty problem. On the one hand, such similar fact evidence may show that indeed there is a pattern of behaviour which suggests that the allegations of the complainant are based on fact. On the other hand, just because Mr. E. sexually harassed other employees does not, in itself, prove that he also harassed Ms. B. It may make it more likely that he did, but it does not prove it.

One of the basic studies of this whole area of justice is D.K. Piragoff's *Similar Fact Evidence* (Toronto: Carswell's, 1981). The author underscores the fact that similar fact evidence creates the danger of unduly prejudicing the mind of the fact finder. It should therefore, he says, be excluded where the risk of undue

The issue and the association's concerns were brought to the attention of the Ottawa police. In a subsequent meeting, the investigating officers outlined the measures they had taken to try to locate the young woman and the case was thoroughly reviewed. Both parties exchanged information in an effort to assist each other in their search for the missing teenager.

Association members declared themselves satisfied that a thorough investigation had, in fact, been conducted.

In a third case, a black family had moved to Nepean and since their arrival had experienced harassment and vandalism. Derogatory names were written on their van and sugar had been put in their gas tank. They believed that the police had not done anything effective to protect them.

The chief of police informed the human rights officer that vandalism was quite generally rampant in the area and that all cases were being investigated, but that the problem was a very difficult one. Subsequently, the complainant informed the officer that the family she had suspected of the vandalism had moved away, and since that time, no further harassment had been experienced.

prejudice outweighs the real probative value. That is to say, can the officer (or the commission or the board of inquiry) be said to be prejudiced concerning what really did take place if similar fact evidence suggests a certain pattern of behaviour on the part of the respondent?

Generally speaking, there is one area where, in ordinary law cases, similar fact evidence is admitted. That occurs when the respondent, for instance, claims a misunderstanding — but when similar fact evidence shows that such a misunderstanding was alleged time and again — it is therefore unlikely to have occurred.

It is important to remember that when the commission investigates a case it does not necessarily proceed on the basis of the considerations outlined above; rather, it tries to establish whether a *prima facie* case of discrimination can be made and, for this purpose, considers similar fact evidence as an important investigatory tool. In a case such as was outlined above, the commission would, doubtless, recommend a board of inquiry. Whether or not the board would then, on the basis of hearings before it, accord credibility to one side or the other, is a matter of conjecture. The commission will recommend a board of inquiry when there is a significant likelihood that discrimination took place. The board will decide whether, in fact, it did. The commission will likely consider similar fact evidence as an important reason for its conclusions; the board may admit it or exclude it altogether.

## From the mail bag

One of our officers received this note from a complainant, subsequent to a settlement:

Please accept our sincere thanks for your esteemed deliberation in reaching amicable settlement between the parties concerned, for which we cannot thank you enough.

Please accept blessings and love from my father.

Yours sincerely,  
L.A.R.



Renaissance Man  
continued from page 1

out the world and also to the most humble. He treats them all with the same concern.

Young Gunther was born in Münster, Germany, in 1912, but spent most of his childhood and adolescent years in Berlin. The boy grew up in a family atmosphere where excellence and intellectual achievement were not mere slogans, but a way of life.

Rabbi Plaut remembers Berlin as a city of culture and excitement, but also one where the madness of anti-Semitism was fast invading the realm of sanity. 'It was a land in which inflation and deflation, violence and reason lived side by side in a marriage that didn't work,' he recalls.

Because of the anti-Jewish legislation of Nazi Germany, Gunther was prevented from articulating upon completion of his law studies, so he began doctoral studies in International Law at the University of Berlin. On July 24, 1934, the title of Doctor of Laws was conferred.

As he waited for professional restrictions to be lifted from non-Aryans, Dr. Plaut, on the urging of his father, who suggested he increase his knowledge of Judaism, began studying in preparation for admittance to the rabbinate.

During his days as a student preacher, he began to develop his athletic prowess. In the spring of 1935, he participated (as the number two man on the tennis squad and a member of the soccer team) in the second Jewish Olympic Games (Maccabiah) in Israel, in which athletes from all over the world participated.

Shortly after the Games, Plaut was invited as one of five rabbinical students to attend the American Reform Seminary in Cincinnati, Ohio. He remembers this new beginning vividly: 'On the fifteenth of September, 1935, the Statue of Liberty came into view. Whatever sentimentalists may claim about its impact is but a fraction of what it means to the confused new arrival who faces a world he does not understand. Somehow the lady calms one's anxieties, and the unspoken promise — I did not yet know the words written by Emma Lazarus — was real.'

He was married to Elizabeth Strauss in Cincinnati on November 10, 1938 — an anniversary the couple ironically shares with what was, until World War II, the biggest pogrom in history — 'Kristallnacht'. In Chicago, on September 1, 1939 — the day war broke out in Europe — he was assigned his first pulpit. Though, by his own admission, he had drifted involuntarily into the rabbinate, he was, by this stage, deeply committed to serving his people.

As an officer in the United States army Chaplains' Corp, he experienced the anguish of liberating the first concentration camp seen by American soldiers (Dora-Nordhausen): 'That sight breached my protective shell as nothing else had done. The war,' as he says, 'played a large part in the shaping of my life and my consciousness.'

In 1948, shortly after his arrival to the pulpit in St. Paul, Minnesota, he was appointed by Governor

Youngdahl to the state's Human Relations Commission — a fitting introduction to state politics and political figures.

During this time, America was in the midst of McCarthyism — a fever which Plaut believes severely impaired America's sense of fairness. 'People were accused for what they had thought 20 years before, for the acquaintances they had made, for the relatives they had. Suspicion was rife; citizen was set against citizen and a profound xenophobia spread its wretched tentacles.'

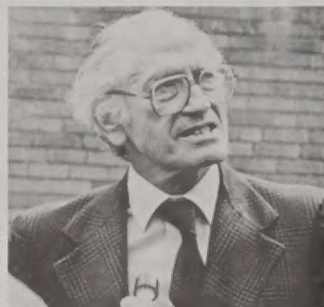


photo: Sam Blum

An immigration bill was introduced which reflected McCarthy sentiment. Rabbi Plaut testified against it in public hearings on the grounds that it made a racial distinction between people — that it assessed what was good for America according to where one came from and promoted the idea that one nationality is more desirable than another. In turn, he was labelled 'subversive'. Since then, the defence of civil rights and liberties has had a high priority on his political agenda.

By 1950, he was addressing the needs of the larger community on weekly radio and television shows and in leading journals. He was appointed chairman of the Governor's Committee on Ethics in Government in 1959, whose report became the foundation for far-reaching legislation.

Rabbi Plaut was asked, in 1961, to become Rabbi of the 100-year-old Holy Blossom Temple in Toronto. He soon became an important voice in Canadian social and political life and, for 16 years, he helped put the name of Holy Blossom Temple in the forefront of progressive religious and social commitment and action.

As indefatigable as ever, he not only served as pastor to a congregation of several thousand families, but also found time to write well over 500 articles and columns for the *Globe and Mail* on every conceivable subject. These articles were later published in two books, *Your Neighbour is a Jew* and *Time to Think*.

Throughout his years as Senior Rabbi at the Temple, Plaut remained in the vanguard of progressive policy. He instituted the first public affairs lecture series and introduced the first folk rock service, which attracted young people by the thousands, in an attempt to explore the religious spirit through the medium of contemporary music.

Among his other accomplishments, he helped found the Planned Parenthood organization in the early 1960s and assisted in founding the Urban Alliance for Race Relations, whose early meetings took place at Holy Blossom Temple.

He always played an integral role at civic and ecumenical gatherings and actively campaigned to have a hate

literature bill passed in parliament. As he stated at the time: 'Civil liberties do not exist in a vacuum, but only when there is a balance between individual rights and the needs of the community.'

Since his retirement from the pulpit in 1978, a number of academic and community honours have been bestowed upon him, including:

- an Honorary Doctorate of Laws from the University of Toronto
- National Humanitarian Award from the National Conference of Christians and Jews
- Sadōwki Medal of Merit awarded by the Toronto community
- Officer of the Order of Canada
- Doctorate of Humane Letters from the Cleveland College of Jewish Studies

As an indication of the respect in which he is held by his peers, in September of this year, a volume of essays dedicated to his honour, which includes such authors as Elie Wiesel, June Callwood, Norman Cousins and Walter Mondale, will be published.

In 1978, he was appointed to the Ontario Human Rights Commission and, shortly thereafter, became its vice-chairman — a position he still holds. To his work with the commission he has brought a wealth of experience, and it, in turn, affords him the opportunity to fine-tune his intellectual appreciation for human rights and temper it with first-hand education. He established, and is editor of, *Affirmation*, the official

publication of the Ontario Human Rights Commission.

Rabbi Plaut played a vital role in the Jewish community as president of the Canadian Jewish Congress from 1977-80. He was a key member of the Canada-Israel Committee and has represented the Canadian Jewish community at various international events.

Author of 13 books of non-fiction (among which is his massive commentary of the Torah is his *magnum opus*), one book of short stories, and countless essays and articles, Rabbi Plaut is a man with a rich and varied past.

Is he optimistic about the future?

'Optimist or pessimist? I am both: desperately worried about the present and yet bound to an abiding, if contradictory, hope in the long haul. . . . Optimism is a function of youth — and if [I] could be optimistic then, surely [I] can be so today. Certainly my children look to the future with a reasonable degree of assurance and our grandchildren will probably do the same. In their hope lies a good deal of mine. Added to this is my belief that God plays his role in history. I continue to trust that He may have good reasons for finding our survival palatable. This is my starting point as I look forward to my 70s.'

Toni Silberman is Executive Assistant — Public Affairs — for the Ontario Human Rights Commission.

## Settlements

The Ontario Human Rights Commission usually makes news when a board of inquiry hands down a decision in some well publicized matter. But such decisions, while important and frequently setting legal precedent, form a very small part of the commission's case load. Of equal importance in many ways is the significant number of settlements which are reached during the conciliation process. They have one advantage over board decisions: they satisfy both parties, and the fact that a settlement is reached does not diminish the educational value of the proceedings to the parties.

Here are some examples of recent settlements:

Four black Americans were returning from a trip in the Great Lakes region; when their car broke down in the early hours of a Sunday morning, they searched for a hotel to accommodate them. The driver of the tow truck deposited them at one of the best known hotels in town, assuring them that they would be able to find rooms.

But when they approached the desk, they were told quite curtly, 'There are no vacancies for you', and the refusal was repeated even when they offered to stay in one room.

Unable, because of lack of transportation, to make the rounds of other hotels, the family were forced to spend the night in their disabled car. Subsequently, they lodged a complaint with the Ontario Human Rights Commission on the grounds of discrimination in public accommodation because of their race, colour, nationality and place of origin.

A careful check of the register revealed that the hotel was indeed fully occupied, that, in fact, all extra spaces such as meeting rooms were also filled.

But the hotel management, when informed of the incident, acknowledged that the receptionist had been less than courteous, helpful and fully professional. It was admitted that he ought to have been more solicitous toward a family that was without transportation and in obvious distress. For this reason — and not because there had been racial discrimination — the management offered to write a letter of apology, and invited the family for a weekend stay with complementary rooms in the spring of 1982.

The family was extremely satisfied with the resolution, and expressed satisfaction to the commission's staff.

\* \* \*

A female secretary alleged that her male manager had invited her to a staff conference, then contrived to have her visit him in his room under some pretext, and there made sexual advances to her. She immediately reported the incident and quit her job. Although the company offered her a transfer to another area, the complainant felt that she could not accept, especially since the offending manager had meanwhile been made an officer of the company.

A settlement was reached prior to the investigation. It provided \$2000 in compensation to the complainant, a letter of apology and a record of the complainant's allegations along with the manager's response, which will be kept in the manager's personnel file. A comprehensive policy on sexual harassment was issued to all staff by the management.